

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1920.

No. 3412.

— 663

No. 10, SPECIAL CALENDAR.

RICHARD BELL, PLAINTIFF IN ERROR,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 18, 1920.

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Court of Appeals of the District of Columbia.

No. 3412.

RICHARD BELL, Plaintiff in Error,

vs.

DISTRICT OF COLUMBIA.

1 In the Police Court of the District of Columbia, November Term, 1919.

No. 591,044.

DISTRICT OF COLUMBIA

vs.

RICHARD BELL.

*Information for Violation Act of Congress Approved July 11, 1919.
Loitering.*

Be it remembered, that in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

2 In the Police Court of the District of Columbia, October Term, A. D. 1919.

THE DISTRICT OF COLUMBIA, ss:

Conrad H. Syme, Esq., Corporation Counsel, by Ringgold Hart, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court, and causes the Court to be informed, and complains that Richard Bell, late of the District of Columbia aforesaid, on 15th street Northwest, being then and there the driver of a certain public vehicle, to wit: an automobile, did wilfully loiter with said public vehicle in front of a certain hotel, to wit: The Shoreham Hotel, by stopping said public vehicle in front of said hotel, and the stopping of the said public vehicle being not then and there for the purpose of taking on or discharging a passenger, contrary to and in violation

of an Act of Congress in such case made and provided, and constituting a law of the District of Columbia.

Second Count. Conrad H. Syme, Esq., Corporation Counsel, by Ringgold Hart, Assistant Corporation Counsel, who for the District of Columbia prosecutes in this behalf in his proper person, comes here into Court and causes the Court to be further informed, and further complains that on the day and — last aforesaid, the aforesaid Richard Bell being then and there the driver of a certain vehicle, to wit: an automobile did wilfully loiter with the said vehicle in front of a certain hotel, to wit: The Shoreham Hotel, by stopping said vehicle in front of said hotel and the stopping of said vehicle not then and there being for the purpose of taking on or discharging a passenger, contrary to and in violation of an act of Congress, in such case made and provided, and constituting a law of the District of Columbia.

CONRAD H. SYME,
Corporation Counsel,
By RINGGOLD HART,
Assistant Corporation Counsel.

3 Personally appeared Maurice Collins this 16th day of October, A. D. 1919, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

E. W. THOMAS,
Deputy Clerk Police Court
of the District of Columbia.

4

Docket Entries.

November 19, 1919.

Information filed.

Plea "not guilty" entered.

Agreed statement of fact and exhibits filed, argued and submitted.

June 7, 1920.

Judgment guilty.

Sentence: to pay a fine of ten dollars, and, in default, to be committed to the Washington Asylum and Jail for the term of ten days.

Exceptions taken to rulings of Court on matters of law and notice given by defendant in open Court, at the time of said rulings, of his intention to apply to a justice of the Court of Appeals, D. C., for a writ of error.

Bill of exceptions presented, signed, sealed, settled and filed.

June 8, 1920.

Recognizance in the sum of \$100.00 entered into on a Writ of Error to the Court of Appeals, D. C., upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in Police

Court and abide by and perform its judgment, and that in the event of the granting of such Writ of Error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Wm. W. Stewart, Surety..

June 9, 1920.

Writ of Error received and filed.

5 In the Police Court of the District of Columbia.

No. 591,044.

DISTRICT OF COLUMBIA

v.

RICHARD BELL.

Be it remembered that this cause came on for trial on the 19 day of November, 1919, before the Honorable Robert Hardison, one of the Judges of the Police Court of the District of Columbia. Thereupon and thereafter all of the facts pertinent to the trial of the cause were submitted to the Court in evidence through an Agreed Statement of Facts embodied in a written stipulation signed by counsel for the respective parties hereto, which stipulation is and which facts are as follows:

6 In the Police Court of the District of Columbia.

No. —.

DISTRICT OF COLUMBIA

v.

RICHARD BELL.

It is hereby stipulated that the above entitled cause shall be submitted to the Court on the questions of law arising under the following agreed statement of facts:

The defendant is a chauffeur employed and his salary paid by the Terminal Taxicab Company, a body corporate, and is charged with stopping a public vehicle, namely, an automobile belonging to that Company in front of the Shoreham Hotel on the 15th day of August, 1919, in violation of Section 12 of the Act of Congress of July 11, 1919, which provides: "That the loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who wilfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the police court of the District of

Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Commissioners of the District of Columbia are hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this Section, and are hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of the Section."

7 By the second count of the Information the defendant is charged in like manner, with the exception that said vehicle is not designated as a public vehicle.

The defendant admits that on the date above specified a taxicab owned by the Terminal Taxicab Company, and of which he was chauffeur, stood against the west curb of Fifteenth Street and fifteen feet north of the main entrance to, but in front of and on a portion of the street adjacent to the Shoreham Hotel, which is located at the northwest corner of Fifteenth and "H" Streets, northwest, in the City of Washington, D. C.

That he did not discharge a passenger upon arrival at the point in question, and while standing there had no definite or ascertained prospective passenger in view, but was standing at said location under orders from and authority of the owners of said hotel for the accommodation of any guests of said hotel who might apply to the Manager or taxicab clerk of said hotel for cab service in accordance with the contract as hereinafter set forth.

The Terminal Taxicab Company, by a contract bearing date the 5th day of September, 1917, to continue in force for ten years from that date, between itself and the Shoreham Hotel Company, undertook to furnish for an agreed consideration certain automobiles or taxicabs with chauffeurs to operate the same in the livery service of the said Hotel, for the exclusive use of the Hotel, its guests and patrons, the said livery service to be under the control of the said Hotel Company and the said vehicles to be stationed in such of the streets on which the Hotel has entrances as should be designated by the said Hotel Company, subject to the street and traffic regulations of the District of Columbia; the said Hotel Company to provide an office in its Hotel for transacting the business of letting the said taxicabs, with the operators thereof, to its guests exclusively and

8 the said Taxicab Company to maintain and keep the machines in good repair and fully equipped and when not in use to store and keep the same at its expense; all questions of charges for such automobile livery service to the guests of said Hotel to be adjusted and determined by the said Hotel Company. The taxicab of which the defendant was in charge upon the occasion above stated was a taxicab furnished by the Terminal Taxicab Company to the Hotel under said agreement and was subject to immediate call and use of the guests of the Hotel exclusively, pursuant to agreements between such guests and the manager, assistant manager or taxicab clerks of the said Hotel. The number of taxicabs to be so furnished the Hotel by the Terminal Taxicab Company does not exceed reasonable provision for the demands made by the guests of the Hotel for such accommodation. The taxicab or vehicle which was in charge of the defendant upon the day and at the place in question

was not licensed as a public hack or other passenger vehicle for hire under the provisions of paragraph 11 of Section 7 of the Act of Congress, approved July 1, 1902, entitled "An Act Making Appropriations to Provide for the Expenses of the Government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes."

RINGGOLD HART,
Assistant Corporation Counsel
for the Defendant.
G. THOMAS DUNLOP,
Attorney for Defendant.

9 The foregoing is the substance of all of the testimony in the case.

Whereupon the cause was argued by counsel and the Court took the same under advisement and thereafter on the 7th day of June, 1920, rendered a written opinion covering this and other cases which were heard and tried together, which opinion was and is as follows:

10 In the Police Court of the District of Columbia.

DISTRICT OF COLUMBIA

vs.

CLARENCE RACKEY, O. N. REAMY, SUMPTER EMBRY,
RICHARD BELL, et al.

Opinion.

Friday, May 21, 1920.

(HARDISON, J.:)

The Court: These prosecutions are under an Act of Congress approved July 11, 1919, providing "that the loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes the same to loiter, either by stopping or slow driving as aforesaid, shall be deemed guilty of a misdemeanor and punished in the Police Court of the District of Columbia by a fine of not less than ten dollars nor more than forty dollars for such offense."

The facts in each case are stipulated. The case may be divided into three classes or groups for the purpose of discussing the legal questions. One is the class of hackers—which for lack of
11 a better term I will denominate individual hackers—around the hotels. There is only one case of that sort, No. 591,047, Wade Brevett. The second class includes cases of the individual hackers around the Union Station. The third class includes the cabs of the Terminal and Auto Livery Companies at the hotels and the Union Station, but there is no question as to any of the cabs of

the Auto Livery Company at the Union Station. There is no serious question as to the case of the individual hackers at the hotels. I have never been able to ascertain what the contention is in their behalf. The stipulation brings them clearly within the terms of the act. And the defendant is clearly guilty because "hotel" is one of the places designated by name in the act and there should be a sentence of conviction in that case.

The second class is composed of individual hackers around the Union Station. It is contended on their behalf first, that the Union Station is not a "public building" such as named in the act. I do not think there is anything substantial in that contention. Because it is a well known fact that one of the main purposes of the act of Congress under consideration was to remedy the condition at the Union Station, and it would be attributing an unwarranted inaptitude of language to Congress to say in reference to the term which it did use that it did not intend it to include the Union Station.

12 The term "public building" is sometimes applied to buildings owned and used by the public for governmental purposes and sometimes applied to buildings privately owned but to which the public generally resorts, such as theaters, hotels, depots, etc. The language of the act is "hotels, theaters or public buildings." I think the rule of *noscitur a sociis* applies here—that words, like individuals, are known by the company they keep—and it is quite clear to my mind that the Union Station is a "public building" as that term is used in this act. It is contended further on behalf of the individual hackers at the Union Station that the strip of ground around the station is not public property nor a public highway because it never has been dedicated as a public highway to the use of the public. Counsel for the defendants rely upon the decision of the Supreme Court of the District in certain litigation between certain sightseeing auto companies, and they contend that the strip not being a highway Congress has no control over it, that the act does not apply to it, and that the individual hackers may stand their vehicles upon it and not incur the penalties of the act. At

13 the outset it may be noted that the language of the Act is not that they shall not loiter on the "streets or on public property." The language of the Act is that they shall not loiter *in front of or around* public buildings. According to the verbiage of the act it is not necessary that the loitering should be on public property or a public highway, nor is the power of Congress limited to controlling these vehicles while on public property. I am of the opinion that the power to control them would extend to them while they are publicly used even though they are at the time on private property. There are some cases to that effect. In the City of St. Paul vs. Frank Smith, 27 Minn. 364, the court in upholding an ordinance providing that no owner or driver of a hack should stop with or without his vehicle while waiting for employment at any place or any street or public ground adjacent to a railroad or railway station except at a place designated by a police officer on duty from time to time at such station or depot said "The fact that the ground about the depots or stations where these ordinances are to be enforced is not the property of the city or public property of any kind, strictly speaking,

is not important. The fact that it is commonly used by hackmen in their business, for the purposes mentioned in the ordinances, is sufficient." I am therefore of the opinion that it is not necessary for the land around the Station to have been dedicated as a public highway to bring hackers loitering thereupon within the penalties of this act. However the case need not be based upon that ground as there is a very interesting question here as to whether that strip of land around the Union Station has been dedicated to public use

14 as a public highway or passway. Judge Stafford in the injunction suit mentioned in the stipulations held that there has never been a dedication of the land around the station as a public highway, and that the right was in the Terminal Company to use it and control it to the extent that it might prevent a sight-seeing auto company from standing its vehicles upon it, and that the Terminal Company has the right to farm out that particular privilege to the exclusion of all others. In order to hold the individual hackers liable for loitering upon this strip of land it is not necessary for this court to run counter to the opinion in that case for the law recognizes a dedication of ground for a public highway with certain reservations in the dedicator. I have found an old case to that effect—*St. Mary's vs. Jacobs*, 7 Court of Queen's Bench, page 53. I quote from it as follows:

"The owner who dedicates to public use as a highway a portion of his land parts with no other right than a right of passage to the public over the land so dedicated, and he may exercise all other rights of ownership not inconsistent therewith; and the appropriation made and the adoption by the public of a part of the street to one kind of passage, and another part to another, does not deprive him of any rights as owner of the land which are not inconsistent with the right of passage by the public."

The same principle is declared in *Lent vs. Tilyou*, 106 New York Appellate Division, 194; *Gowen vs. Philadelphia Exchange Company*, 5 Watts & Sergeant, 141; *Poole vs. Huskinson*, 11 M. & W., page 827.

15 Now to say that the strip of ground around the Union Station has not been set apart to the use of the public as a thoroughfare or passway is to contradict a plain and obvious fact. The Terminal Company was created for the business that it is now engaged in. It was given certain corporate powers and has certain corporate functions and those are the justification for its corporate existence. Without performing those duties and discharging those functions its corporate life could not continue. We cannot conceive of a Union Station that people cannot get to and from. The strip of land around the station is absolutely essential to the performance of the duties for which the Terminal Company was created, and not only the discharge of its duties but its life as a corporation depend upon this strip of ground around the station being used by the public for access thereto.

Such use however is not inconsistent with certain rights of the Terminal Company. According to my view of the law such strip of land may be dedicated to the use of the public for a passway to the

extent necessary or such a part of it as may be necessary, and at the same time the right to use certain parts of it or any of it to such an extent as is not inconsistent with the right of the public to pass on it and over it, remains in the Terminal Company. The test of this thing is: could the Terminal Company continue its existence there and forbid the public to use the strip of ground around it? So I think for these reasons the drivers of these individual cabs, if guilty of loitering upon this ground around the station, incur the penalties of the Act.

There are two cases in this class—Lewis Daniels, No. 591,045, and Wade Brevett, No. 591,048.

16 We now come to the serious question in the case, and that is: Are the cabs of the Terminal Taxicab Company and the Auto Delivery Company *public vehicles*?

This is an interesting question, to which I have devoted considerable thought. Counsel for the defense has filed a brief in support of his contention that such vehicles are not public vehicles as that term is used in the Act. It has been of a good deal of assistance to me in trying to work out a solution of the question.

He relies upon a decision of the District Court of Appeals in the case of Willard Hotel Company v. The District of Columbia, 23 Appeals, D. C., 271, and the case of Donovan v. Pennsylvania Company, 199 U. S., 220.

I read from the opinion in the Willard Hotel case:

"It was charged in the same court that the plaintiff in error, being the driver of a certain hotel vehicle, presumably the same vehicle that is mentioned in the information in the preceding case, unnecessarily obstructed the free passage of 14th street, Northwest, apparently in the neighborhood of the New Willard Hotel and in front thereof, and hindered and delayed the passage of other vehicles, in violation of the Police Regulations of the District."

The Police Regulation under which that prosecution was had was directed against the obstructing of the free use of the streets and was quite different from this Act of Congress. The defense there was practically what it is here. They relied upon a contract between the Taxicab Company and the Hotel Company, and the Court, in a logical opinion, held that under the law as it then stood, and under the common law, the Hotel Company had a right to contract with the Taxicab Company to stand in front of the hotel and serve its guests.

The Court in that opinion used language which I think is
17 pertinent to the question here, and I quote it as follows:

"Holding, as we do, that the owner of adjacent property, be he private individual, merchant, hotel keeper, or what not, is entitled to privileges and immunities in the public highway in front of his premises to somewhat greater extent than the general public or any other person, we must, however, reiterate the caution that such adjacent owner's use of the highway is necessarily subject to reasonable regulation thereof by the public authorities, and we are not to be understood by anything that has here been said as holding that his rights are beyond such regulation. What we mean to hold in the present case is that, subject to all reasonable regulation by the public

authorities to prevent the use from becoming excessive, the hotel company has the right to station and maintain its own carriages on the street in front of its own premises for the transaction of its own business and the accommodation of its own guests, without violation of any existing law or municipal ordinance."

Of course the principle laid down in that case goes no further than the facts of that case. It is not an authority at all for a case arising under a wholly different regulation. That opinion goes on to recognize the principle that the police power to regulate traffic exists, and it takes note of the fact that those things are within the regulatory power of the law-making branch of the Government. That the legislature might in the exercise of the police power act upon that situation and change it is beyond controversy. So that case is not conclusive of the question here.

In the case of *Donovan v. Pennsylvania Company*, 199 U. S., 280, the situation was practically, in so far as the principle of the case goes, what it is in the case at bar. There the Supreme Court decided that the Terminal Station in Chicago had a right under its charter

18 to contract with a certain taxicab company in the same manner that the Washington Terminal Company has contracted with the Terminal Taxicab Company. In that case the Court held that owing to the situation existing around a station in a large city like Chicago, taking into consideration the great number of passengers that pass through the station, that while the station owed certain service to the public, still its property was privately owned and the owners had a right to use it so as to get income out of it in any manner not inconsistent with the duty the company owed to the public.

In that case there was no statute or ordinance of the State of Illinois or the city of Chicago limiting the right of the station company to contract with the taxicab company, and of course we must read into the opinion in that case a recognition of the scope of the police power, and that it might be extended to change a situation existing there. There is nothing in that opinion to the effect that if the law-making branch of the Government had seen fit, in the exercise of the police power, to have established a rule different than the one created by agreement between the station company and the taxicab company, it might not have done so.

This leaves the question here uncontrolled by the decisions. The question here has never been decided and so we have to reason it out on principle as best we may.

It is contended here by the Government, or rather it was advanced at the argument, though never seriously insisted upon, that the language of the Act under consideration is broad enough to prohibit any vehicle, whether it be a public or private vehicle, loitering around a public building. But I think there is no substance in that

19 contention. The Act clearly does not apply to any except public vehicles, and the question here is whether the cabs owned by these automobile companies are *public vehicles*. Counsel for the defendants in his brief goes on to cite certain existing provisions of law applicable to what he terms public taxicabs, and certain other provisions applicable to the cabs of the automobile companies,

and argues from that that Congress has made a distinction in certain material respects, that is, to put the cabs, the property of the automobile companies, under the control of the Utilities Commission, and, as the privately owned taxicabs were not placed under the control of the Utilities Commission, therefore the two classes were differentiated for all purposes. However, I think the conclusion is unwarranted, for the two classes of taxicabs may be differentiated for purposes of taxation, or for purposes of classification in other respects, and yet that does not settle our trouble at all, and we have to go back at last to the situation existing when the Act under consideration was passed.

The situation sought to be remedied was the congestion of taxicabs around the Union Station and the hotels, which resulted in inconvenience and danger to the public in getting to and from those places, and the people who had occasion to use the streets around those places. I think it is quite clear that Congress did not aim to discriminate in favor of or against any particular class of taxicabs, or have in mind any particular class of vehicles. Congress was not interested in any controversy existing between the individual
20 hackers and the taxicab companies. It was immaterial to the average Congressman who voted on it, and likewise to the man who drafted the bill, whether the congestion and the consequent danger and annoyance were caused by cabs of the Terminal Company or by cabs owned by individual hackers. The term *public vehicles*, I think, was used because it was a comprehensive term, and was intended to apply to all vehicles serving the public.

The opinion in the case of the Terminal Taxicab Company v. Kutz, etc., 241 U. S., 252, is illuminating. I read from the opinion:

"This is a suit to restrain the Public Utilities Commission of the District of Columbia from exercising jurisdiction over the plaintiff. The Commission was created and its powers established by a section (Section 8) of an appropriation act, divided into numbered paragraphs. * * * By Paragraph 2 of the Section 'Every public utility is hereby required to obey the lawful orders of the Commission,' and by paragraph 1 'public utility' embraces every common carrier, which phrase in turn is declared to include 'express companies and every corporation * * * controlling or managing any agency or agencies for public use for the conveyance of persons or property within the District of Columbia for hire.' Steam railroads, some other companies, and the Washington Terminal Company, are declared not to be within the words. The main question is whether the plaintiff is a common carrier under the definition in the Act."

The Supreme Court in that opinion modified and affirmed the decision of the Supreme Court of the District and the Court of Appeals, and held that the Terminal Taxicab Company is a public utility. A public utility, of course, is a concern that serves the public. That is what the name indicates. Now, the only way that these taxicab companies do serve the public at all is in carrying passengers
21 with their vehicles. They have no instrumentalities or agencies for serving the public in any other way, and to say that a public service corporation is a public utility and then con-

clude that the only instrumentality, namely, a taxicab, that it uses to serve the public, is not a public vehicle, requires a process of reasoning that my mind fails to follow. If this public utility had some instrumentality or some agency that might make it a public utility without taking into consideration its cabs or its vehicles, it might afford a basis for the contention that they are not public vehicles; but these taxicabs are the only instrumentalities that make the company a public utility; and how those instrumentalities can make the thing a public utility and still not be public vehicles, when the carrying of the public in those vehicles is the sole function of the company, I am not able to understand, and I do not think it can be demonstrated at all.

The question here was not expressly decided in that case, because it was not necessary for decision; but I think that, considering the reasoning in that case, the inference is unavoidable. It was argued in that case that because these vehicles served only a limited part of the public they were not public vehicles in the sense in which that phrase is used in the Act under consideration. But, as was said in the opinion in that case, "The public does not mean everybody all the time." Of course there is no public utility that serves all of the public, and the Court in that case did say expressly that these taxicabs served such a considerable part of the public that the taxicab

22 companies were thereby made public utilities, and subject to the jurisdiction of the Public Utilities Commission.

There is one argument advanced in the brief of counsel for the taxicab company which I think is worthy of notice:

"If the Act in question is to be construed as applying to the operations of the public utility taxicab companies of the District of Columbia which are under the jurisdiction of the Public Utilities Commission, then it is invalid as applying to them because it is not passed in accordance with Paragraph 5 of Section 8 of the Act of March 4, 1913, known as the Public Utilities Law, which provides, 'That whenever any public utility or person shall propose any change in any law relating directly or indirectly to the property or operations of any public utility, the said proposed change shall also at the same time be submitted to the Commission (Public Utilities Commission), which may take testimony and give a public hearing thereon, and the Commission shall recommend such bills as will in its judgment protect the interests of the public and such public utility, and transmit the same to the proper Committees of the Senate and House of Representatives.'"

And because that was not done in this case it is contended that it could not have been the intent of Congress to include these vehicles, the property of the public utility company, within the reach of this Act. I do not think that that provision of the Public Utilities Act was ever intended to apply to legislation of this sort. That provision applies to the conduct of the business of a public utility company, and was never intended to apply to such incidental control over its agencies or instrumentalities as would be expected to fall within the usual exercise of the police power.

Counsel for the defendant, I take it, would hardly contend that should Congress pass a law changing the rate of speed at which

vehicles may use the streets, that, in order to make it apply to the vehicles of the Terminal Taxicab Company, the aforesaid provision of the Public Utilities Law should be complied with.

23 In principle that would amount to practically what is contended for here. Congress has, since the Public Utilities Law went into effect, changed the law here with reference to the speed at which vehicles may travel, and the Commissioners of the District have made other regulations applicable to all vehicles using the streets, and nobody has yet contended that such enactments do not apply to the vehicles of the taxicab companies in the same way that they apply to any other vehicle.

These police regulations that only incidentally affect the instrumentalities of the public utilities companies, whether enacted by Congress or by the Commissioners, may be passed just like other police regulations, and it certainly never was contemplated that before such instrumentalities of the public utilities companies could be affected in the manner that this Act affects them, that resort should be had to the said section of the Public Utilities Act.

It is permissible to take this cited provision of the Public Utilities Act into consideration in construing the present law, but if Congress saw fit to disregard such provision by a later enactment, it could, of course, do so.

It is contended further that if this regulation is held to apply to these companies it will impair the obligation of the contracts which they have with the Washington Terminal Company and with the hotels. Submitted in these records are copies of contracts or agree-
24 ments between the taxicab companies on the one hand and the hotels and the Washington Terminal Company on the other, and in each of them there is a recognition of the right and power of the legislature to change existing regulations relative to such agreements. There is a plain stipulation in each of these contracts to that effect. Of course that power would exist whether there was a stipulation to that effect or not, but that there is an express stipulation in each of these contracts that "this contract is subject to such regulations as the legislature may bring about," estops the companies to complain that any reasonable regulation operates to impair such contract.

Of course it is fundamental and quite well known that the various kinds of contracts between municipalities and public utilities companies are ordinarily within the reach of the police power, and leaving out of consideration these stipulations in these various contracts, I think that if this law should be held to apply to these taxicabs standing in front of the hotels and the Union Station, that it would not offend any constitutional provision against the impairment of the obligation of the contract. And, in this connection, it may be said in passing that there is no express provision in the Federal Constitution against the impairment by Congress of the obligation of a contract.

The Court, however, would be loath to give to an Act of Congress a construction that would operate to impair the obligation of a contract, and would not do so if the language permitted any other construction, because it is never to be assumed that Congress would

intend to do that. However, if this Act does prevent taxicabs from standing in front of hotels and the Union Station, there is no reason why they cannot have the same arrangement with the
25 hotel companies and the station company that they have now. Some private place off the street might be had at which the cabs of the company should remain until called by the hotels and the station company.

From these considerations I conclude that the Act does apply to and forbids the cabs of the taxicab companies from standing in front of and around hotels.

Now, as to the situation around the Union Station with reference to the taxicab companies. As I have endeavored to demonstrate, that strip of ground around the station is, in a large part, used as a thoroughfare, and so much of it as is used as a thoroughfare has been dedicated and set apart to the public for that purpose. And even if that be not so the language of Congress forbids the loitering of these vehicles in front of or around public buildings, whether the loitering be upon public or private ground. And it must be remembered that the Washington Terminal Company is a creature of Congress. Congress breathed the breath of life into it, and it would not have existence except for the Act of Congress.

In the case of the Brooklyn Eastern District Terminal Company v. The United States, 249 U. S., 296, the Supreme Court held the terminal company to be a common carrier and subject to the hours of service law.

The terminal company here, being a common carrier and a creature of Congress, whether this strip around the station has been dedicated to the public as a passway or not, would be subject to the
26 reasonable control of Congress to the extent that the rights of the public be preserved; and when the situation existing at the Union Station is taken into consideration, it is apparent that the control here exercised is not arbitrary or unreasonable.

Much has been said in the argument in this case with reference to the conflict of interest existing between the public hackers and the cabs of the taxicab companies. That is a matter that the Court is not warranted in taking into consideration, nor do I think Congress was interested in that controversy any further than the rights of the public were thereby affected.

Much has been said about the injustice of preventing the individual hackers from getting business, as it is alleged these contracts between the taxicab companies and the hotels and the Union Station have done.

The thing of chief concern to Congress doubtless was the interest of the public in the use of the station, unhampered and unimpeded by the congestion of traffic around it. As conditions exist now if a person takes a cab of one of these automobile companies and goes to the station he gets a little the best of it, because he is carried next to the door entering the waiting room, and does not have to cross several tracks and pass between automobiles to get into the station. When he comes out of the station and takes a cab of the Terminal Taxicab Company he has all the best of it, because he can get aboard a cab standing in the first thoroughfare, and does not have to pass

through a line of cabs and across other thoroughfares. If an individual goes to the station in his own vehicle it is very difficult for him to get in the first alleyway. So, as a matter of fact,
27 it does not work out equally. Equal service is not afforded to the public, and that of itself, I think, would be a sufficient warrant for Congress acting in the matter, and Congress did, I think, probably take all these things into consideration, and intended the rule to apply to the cabs of the taxicab companies as well as to the individual hackers while upon ground used by the public as a thoroughfare.

The Donovan case, *supra*, held that the Terminal Station Company had a right to contract with certain taxicab companies to the exclusion of others, in the absence of any regulation to the contrary; but the fact that the aforesaid situation does exist here, and that that part of the public which rides with the Terminal Taxicab Company gets the best of the situation, is sufficient warrant, I think, for Congress passing this Act, and determining that all should have equal service.

My conclusion is that the term "public vehicles" used in this Act does extend to the cabs of these taxicab companies, and that it applies to their cabs standing in front of the hotels and upon all that part of the land around the Union Station that is used as a public thoroughfare.

It is contended here by counsel for defendant in these cases that the Commissioners of the District have given to the Washington Terminal Company what is termed a "garage license" authorizing it to assign to such cabs as it might select a certain space around the Union Station. This garage license, if such there be, cannot be
28 defined by metes and bounds, and seems to be a sort of roving license, the exact limits of which cannot be definitely ascertained. I doubt if there ever was a warrant or authority in law for such license, but even if there was, the Act of Congress could change it, and I am of the opinion that all of that space in the archway and that part of the space out in front of the station that is used as a public thoroughfare has been dedicated as a public highway, and that these cabs have not a right to stand around there upon any of such space, and rely upon any authority which they claim to have been derived from the Commissioners of the District. I am of the opinion, however, that so much of that space in front of the station as is not used for a public thoroughfare, and is not necessary for the use of the public, is, under the principle laid down in the Donovan case, subject to the regulation and the control of the Washington Terminal Company, being its private property, and that the Washington Terminal Company has a right to contract with taxicab companies relative to the assignment to them of such space. That is to say, that such right is not inconsistent with the right of passage in the public; and whatever space exists there that is not necessary to and is not used by the public as a passway may be assigned by the Washington Terminal Company to the taxicab companies; and I doubt very seriously if Congress has the power to interfere with such an arrangement.

29 This conclusion is in harmony with the case of the District of Columbia vs. Fickling, 33 Appeals, 371.

In that case the court held that, though the Washington Terminal Company could lawfully assign space on its own ground in front of the station as a stand for the cabs of the Terminal Taxicab Company, nevertheless such a stand was a public hack stand within the meaning of the personal tax Act of Congress approved July 1, 1902, and that the cabs occupying such stand were taxable under Section 11 of that act, which provided for a tax on all vehicles using the public stands.

In the case of Sumpter Embury the stipulation shows he was standing, at the time of the offense charged, upon space in front of the station which had been set apart to the Terminal Taxicab Company as a stand for its cabs, and which was not necessary for and was not used by the public as a passway.

The case against him is dismissed.

As to the other defendants, judgment will be entered against them, and a fine of ten dollars assessed in each case.

30 Whereupon the defendant by his counsel then and there excepted to the said opinion and findings of the Court as a whole as being contrary to law and an erroneous statement of the law applicable to the facts as embodied in the said Agreed Statement and the said exception was entered upon the minutes of the Court.

And thereupon the defendant by his counsel then and there specially excepted to so much of the said opinion and findings as holds that "the situation sought to be remedied was the congestion of taxicabs around the Union Station and the hotels, which resulted in inconvenience and danger to the public in getting to and from those places," and the said exception was entered upon the minutes of the Court.

And thereupon the defendant by his counsel then and there specially excepted to so much of the said opinion and findings as holds that the contracts or agreements between the Taxicab Companies on the one hand and the hotels and the Washington Terminal Company on the other, contain in each of them "a recognition of the right and power of the legislature to change existing regulations relative to such agreements, and that there is a plain stipulation in each of these contracts to that effect; that such power would exist whether there is a stipulation to that effect or not, but that there is an express stipulation in each of these contracts that this contract is subject to such regulations as the legislature may bring about" and that such alleged stipulation estops the Companies complaining that any reasonable regulation operates to impair such contract, and the said exception was entered upon the minutes of the Court.

And thereupon the defendant by his counsel then and there specially excepted to so much of the said opinion and findings as holds that even though the Act of Congress in question was intended to and did impair the obligations of the parties to the contracts in

31 question, i. e., between the Shoreham Hotel and the Terminal Taxicab Company and the Washington Terminal Company and the Terminal Taxicab Company, it would not of-

fend any constitutional provision against the impairment of the obligations of the contracts, and the said exception was entered upon the minutes of the Court.

And thereupon the defendant by his counsel then and there specially excepted to so much of the said opinion and findings as holds that the Act of Congress in question does apply to and forbids the cabs of the Terminal Taxicab Company including the cab in question in this case from standing in front of and around the said Shoreham Hotel, and the said exception was entered upon the minutes of the Court.

And thereupon the defendant by his counsel then and there specially excepted to so much of the said opinion and findings as holds that the term "public vehicle" as used in the Act of Congress in question does extend to the cabs of these Taxicab Companies, including the vehicle of the Terminal Taxicab Company in question herein, and that it applies to their cabs standing in front of the hotels, including the cab of the Terminal Taxicab Company at the Shoreham Hotel and upon that part of the land around the Union Station that is used as a public thoroughfare, and the said exception was entered upon the minutes of the Court.

And thereupon and after all of the exceptions were duly taken as aforesaid and entered upon the minutes of the Court and before judgment was entered in the cause, counsel for the defendant then and there prayed the Court to sign and seal this his Bill of Exceptions, and with the request of said counsel for the defendant the same was accordingly signed and made a part of the record
32 in this case this 7th day of June, 1920.

ROBERT HARDISON,
Judge of the Police Court.

[Endorsed:] Filed Jun- 9, 1920. F. A. Sebring. G. Thomas Dunlop, Attorney & Counsellor at Law, Washington, D. C.

33 June 7, 1920.

Judgment guilty.

Sentence to pay a fine of ten dollars, and, in default, to be committed to the Washington Asylum and Jail for the term of ten days.

34 June 8, 1920.

Recognizance in the sum of \$100.00 entered into on a writ of error to the Court of Appeals, D. C., upon the condition that in the event of the denial of the application for a writ of error, the defendant will, within five days after the expiration of ten days, appear in the Police Court and abide by and perform its judgment, and that in the event of the granting of such a writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Wm. W. Stewart, Surety.

35 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Robert Hardison, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, Plaintiff, and Richard Bell, Defendant, (Information No. 591,044), a manifest error hath happened, to the great damage of the said Defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Constantine J. Smyth, Chief Justice of the said Court of Appeals, the 9th day of June, in the year of our Lord one thousand nine hundred and twenty.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the
District of Columbia.*

Allowed by
CONSTANTINE J. SMYTH,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

[Endorsed:] Filed Jun- 9, 1920. F. A. Sebring, Clerk Police Court, D. C.

36 In the Police Court of the District of Columbia.

No. 591,044.

DISTRICT OF COLUMBIA

v.

RICHARD BELL.

Designation of Record.

It is hereby stipulated and agreed by and between the District of Columbia and the defendant, Richard Bell, by their respective

attorneys, that the record on appeal in the Court of Appeals in the above entitled cause shall consist of:

1. The Information.
2. The Docket Entries.
3. The Bill of Exceptions.
4. The Judgment and Sentence.
5. Memorandum of Bond on Appeal.
6. Writ of Error.
7. This Designation.
8. Certificate of Clerk.

G. THOMAS DUNLOP,
Attorney for Defendant.
RINGGOLD HART,
Ass't Corporation Counsel, for
the District of Columbia.

[Endorsed:] Filed Jun- 9, 1920. F. A. Sebring.

37 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Cam Howard, Deputy Clerk of the Police Court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 35 inclusive, to be true copies of originals in cause No. — wherein the District of Columbia is plaintiff and Richard Bell defendant, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, — the City of Washington, in said District, this 18th day — June, A. D. 1920.

[Seal of Police Court of District of Columbia.]

CAM HOWARD,
Deputy Clerk Police Court, Dist. of Columbia.

Endorsed on cover: District of Columbia Police Court. No. 3412. Richard Bell, Plaintiff in Error, vs. District of Columbia. Court of Appeals, District of Columbia. Filed Jun- 18, 1920. Henry W. Hodges, Clerk.

